

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) |
| Creation of a Low Power Radio Service |) MM Docket No. 99-25 |
| |) Report No. 2950 |
| |) MB Docket No. 07-172 |
| |) RM-11338 |
| |) FCC12-29 |

To: The Commission

Partial Support for Petitions for Reconsideration & Reply to Comments

I am one of four petitioners for reconsideration to the orders adopted as part of the Fourth Report and Order in this proceeding. One of the other petitioners, Educational Media Foundation (EMF) objects to both the national cap of 50 applications and to the one-to-a-market cap. EMF believes that these caps are unnecessary and represent a capricious or arbitrary act on the part of the Commission. From the context of ensuring that spectrum is available for future LPFM stations, I believe that EMF is correct. The Commission did not demonstrate how a retroactive national cap on applications helps the FCC meet the requirements of the LCRA. Although the majority of translator applicants, including me, are not affected by the national cap, those that are may be unfairly singled out due to their size. From a legal standpoint, these applicants violated no laws or rules, as has been acknowledged by the FCC. It appears likely that the matter will end up in court which will ultimately delay the process while the court case plays out. I believe that the Commission could have chosen a more sustainable and quickly resolved solution had it confined itself to ensuring that LPFM spectrum was available. Proponents from all sides will disagree on solutions to that issue, but in the end, a limited approach would have avoided the broad brush strokes used in the fourth R & O and would be far less likely to be challenged.

As echoed in my own petition and those of the other three petitioners, the Commission has placed a secondary cap of one application per market in non-spectrum limited areas. This cap as well as the national cap is intended to address so-called "trafficking" and "speculative" applications. In support of their view that there was an undesirable level of trafficking, the Commission stated that a total of 700 translator applications from auction 83 have been transferred while another 1,000 were never built.

Limited Analysis of transfers:

According to the FM database as of June 01, 2012, there are currently 5,558 licensed auxiliary (most are translators) stations on the air. The database includes a field showing the owner's FRN number. Any time a station goes on the air or is assigned to another party, the FRN changes. Generally, there are lots of changes and additions to

the FRN within three to four years after a filing window as new stations come on the air. After the first few years, the changes to the FRN numbers are primarily transfers of control/ownership. Looking at the numbers of translator stations with changed FRNs over the past five years, the average number of changes is 440. That represents an annual change of 7.9% of the total number of licensed facilities. According to statistics presented by other filers in this proceeding, only about 550 translators have actually changed hands since the 2003 window, but we did not confirm this number and chose to use our figure which was less generous to the translator operators' position.

According to the June 01, 2012 database, the total number of commercial FM stations is 6,468. The average number of FRN changes, averaged over the past 5 years is 1,168. That is 18% of the total.

The database indicates that there are currently 4,641 full service AM stations licensed. The average number of AM FRNs that have changed over the preceding five year period is 620. That is 13.4% of the total number of licensed facilities.

Although the above data is not refined, it appears that the percentages of AM and commercial FM stations changing hands are much higher than those of translators. In addition, several new services have become available for translators to rebroadcast which has increased demand for the service far above what it was in 2003. Among the new services vying for translators are AM stations and the relatively large number of new FM HD channels. It is not at all surprising that some translators have changed hands as a natural result of the new demand. This should be expected and statistically accounted for by subtracting out those translators that have changed hands to AM stations or to FM stations now broadcasting HD content on them.

Further, the FCC has not presented any statistical analysis demonstrating that trafficking of translators is problematic or even statistically above the levels seen in other broadcast services, particularly among commercial applicants. Either this is a tempest in a teapot, or it is a real problem. If this so-called "trafficking" is a real problem and the FCC wishes to impose restrictions to combat the situation, then the FCC must also look at full powered broadcasters with an eye towards the same restrictions since the problem appears to be at least twice as severe in those services as it is in the translator service. Although it is possible that individual applicants may have transferred licenses that are statistically higher than the industry average, they have had little effect on the service as a whole and there is no evidence that the public interest, convenience and necessity has been harmed by this, if it is even proven to have happened.

Points raised by REC Networks' Partial Opposition to Petitions for Reconsideration:

In a "Partial Opposition to Petitions for Reconsideration" REC Networks takes aim at non-commercial translator applicants, but does not address the many commercial applicants. REC supports allowing limited waivers of the 1 to a market cap, provided that:

1. The 60dBu contours of the proposed translators does not overlap another owned by the same licensee.
2. The translator would not preclude future LPFM licensing based on the FCC's grid system.
3. The applicant agrees not to sell the translator for a profit for 4 years.
4. The applicant agrees to only carry their own licensed station on the translator for the same 4 year period and also agrees not to broadcast any HD content.
5. A restriction on how close a translator can be from a spectrum limited market.

It is clear from these points that REC is only thinking of non-commercial translators. I will address, briefly, some problems in REC's suggestions.

1. The restriction about non-overlapping 60dBu contours from co-owned translators makes some sense if the translator is a non-commercial facility broadcasting the same signal from a full service station. In that case, the translators could be providing redundant coverage which is already disallowed. However, the not allowing the 60dBu contours to overlap at all would potentially leave service gaps that are unnecessary. A better proposal would be to not allow more than 50% contour overlap, or to provide for a waiver where overlapping coverage can be shown to be necessary. In the case of commercial applicants, there are many reasons to have overlapping 60dBu contours. Broadcast of totally different channels into the same community is one reason. With all of the AM stations and HD channels now available, the demand for translators has far outstripped the supply. In markets where spectrum is available, there is no reason to restrict ownership of overlapping signals as long as the licensee demonstrates that each has a legitimate purpose.
2. In non-spectrum limited markets, there is already a process that must be followed to demonstrate no loss of LPFM availability. REC's suggestion is basically redundant to the process already in place and is, therefore, moot.
3. I have already addressed, to some degree, my impression that the statistical evidence of a serious trafficking problem does not appear to be there. This restriction appears to be arbitrary and capricious unless some evidence of a real problem can be presented. Further, I would respectfully remind the Commission that, even in the days of anti-trafficking rules for new licensees, the holding period for stations was only three years.
4. Carriage of one's own signal only applies to licensees that own a primary station. Many translator operators, particularly, commercial translator licensees and applicants own no primary station. Clearly REC was focussed on the large non-

commercial broadcasters and simply did not consider the commercial operators. Regardless, REC's position attempts to impose a restriction on the broadcaster that might not be in the best interest of the public. What if the translator/primary station owner decides to change formats but another entity with a similar format wants to keep serving the community? Should the community be deprived of a loved format because of a restriction? A case in point happened in the Gainesville Florida market recently. The NPR affiliate station belonging to the University of Florida switched from the longtime Classical music format to the more popular NPR talk format. The station moved the classical format to their HD-2 channel. This is a trend that is happening across the nation as the classical music format's listenership has eroded over the years. Never-the-less there were still thousands of classical listeners that were very affected by the loss of the format. One group, with more than 1,000 members attempted to acquire a translator to rebroadcast the classical format in analog, but none was available. If the University had owned a translator, REC's proposal would have disallowed the use to rebroadcast the classical format and deprived the listeners with only analog tuners of the format.

5. The FCC has already laid out and approved a plan for preventing interference from translators to the protected "sacred" grid points in spectrum limited markets. There is no need to re-work the problem again.

In summary, I would request that the FCC consider the impact of the proposed rules upon all translator operators, not just the non-coms and large filers.

The timing of this filing is based upon publication in the Federal Register. The US Government Printing office published a correction online that stated, in part, that the reply comments deadline for this proceeding is June 15, 2012. I have relied on this information, so I respectfully request that these reply comments be considered in this proceeding.

Respectfully Submitted,

Kyle Magrill